IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6577 OF 2005

The Maharashtra Tourism Development Corpn. Ltd. & anr. ... Petitioners

V/s

Atur India Pvt. Ltd. & ors. ... Respondents

Mr. V.P. Sawant i/by M/s. Desai & Chinoy for the petitioners.

Mr. Uday Warunjikar for the respondents.

CORAM: S.U. KAMDAR, J.

DATED: 22ND NOV., 2005

P.C.:

1. The present petition is filed by the petitioners challenging the order dated 3.8.2005 by which the trial Court has refused to take the written statement on record on the ground that the application for filing written statement is made one day later than what was directed by this Court in Writ Petition No. 6603 of 2003 decided on 8.6.2005. In my opinion, the order is wholly misconceived and unsustainable. Even assuming that there is delay of one day, it was open for the Trial Court to extend the same. The substantive rights

of the parties cannot be defeated by procedural wrangles as has been done by the Trial Court in the present case. The learned counsel for the respondent further contended that even a period of one day delay cannot be extended unless a written application for the same is made before the trial Court. It is further contended that there should be an opportunity to answer the explanation given for condonation of delay and thereafter the trial Court could passed an order for condonation of delay. In my opinion, the contention raised by the respondents are without any merits and indicates the nature in which the respondent is seeking to contest the litigation. In my opinion, the trial Court had ample power and discretion for passing appropriate order for condonation of delay of one day in filing written statement in furtherance of substantive justice and the substantive justice cannot be defeated by the hyper-technical view of the trial Court.

2. In that view of the matter, the order passed in Spl. Civil Suit No.887 of 1999 is set aside. The 7th Joint Civil Judge, Sr.Divn., Pune is directed to take the written statement on record and proceed thereon in accordance with law.

3. Petition is disposed of with no order as to costs.

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